

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH T. O'BRIEN and
BRIAN L. WAGNER

Appeal 2007-2540
Application 10/621,629
Technology Center 3600

Decided: July 31, 2007

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and
CHARLES F. WARREN, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal the final rejection of claims 1-12 and 17-28 under
35 U.S.C. § 134. We have jurisdiction over the appeal pursuant to 35 U.S.C.
§ 6(b).

We AFFIRM.

INTRODUCTION

Appellants claim a plug or pillar shield for enclosing an opening within a wall of a hollow post and securing a wire harness within the hollow post (claims 1, 17, 25, and 27).

Claims 1 and 6 are illustrative:

1. A plug inserted into and enclosing an opening within a wall of a hollow post and securing a wire harness running within said hollow post, comprising:

at least two locks projecting out from a surface of said plug and securing said plug within the opening, at least one of said locks being located at or near a first end of said plug, and at least one of said locks being located at or near a second end of said plug, said locks resiliently engaging an edge of the opening and aligning said plug within the opening along a first axis;

at least two tensioners projecting out from said surface of said plug and resiliently engaging the edge of the opening and aligning said plug within the opening along a second axis, at least one of said tensioners being located at or near a first edge of said plug, and at least one of said resilient tensioners being located at or near a second edge of said plug;

at least one stabilizer projecting out from said surface of said plug and resiliently engaging the wall, thereby exerting tension within the plug along a third axis; and

at least one fastener for securing the wire harness to said plug.

6. The plug according to claim 1, wherein said plug is a one-piece monolithic structure.

The Examiner relies on the following prior art reference as evidence of unpatentability:

Mizusawa	US 4,488,206	Dec. 11, 1984
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The rejections as presented by the Examiner are as follows:

1. Claims 1-5, 7-12, 17-21, and 23-28 are rejected under 35 U.S.C. § 102(b) as being unpatentable over Mizusawa.
2. Claims 6 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mizusawa in view of the Admitted Prior Art (APA) shown in Figures 1 and 2.

Appellants separately argue claims 1, 6, 17, 22, 25, and 27. Accordingly, claims 2-5, 7-12, 16-21, 23-24, 26, and 28 stand or fall with these claims.

OPINION

35 U.S.C. § 102(b) REJECTION OVER MIZUSAWA

CLAIMS 1 AND 17

Appellants initially argue that Mizusawa does not disclose a stabilizer that “exerts tension along a third axis, as required by claim 1” or a stabilizer that “generates tension directed along a third axis, as required by claim 17” (Br. 13-14). Appellants argue that Mizusawa’s seal packing 12, which the Examiner refers to as corresponding to the claimed “stabilizer,” is “wholly incapable of exerting or generating a tension along a third axis, as is required by claims 1 and 17” (Br. 15). Appellants ultimately concede that Mizusawa’s seal packing 12 is compressed (i.e., nipped) and, as a result, is exposed to a certain level of tension (Reply Br. 3). However, Appellants contend that the tension or reactionary force in the compressed (i.e., nipped)

seal packing 12 cannot possibly be construed to be “exerting” or “generating” tension as required by claims 1 and 17 (Reply Br. 3).

We have considered all of Appellants’ arguments and find them unpersuasive for the reasons below.

As an initial matter, Appellants argue features that are not in the claims. Specifically, regarding claim 17, Appellants argue that Mizusawa’s seal packing cannot be construed as “generating” tension (Reply Br. 3) and that Mizusawa does not disclose a stabilizer that “generates tension directed along a third axis” (Br. 14). However, claim 17 does not have the “generating” claim language as argued by Appellants. In fact, the “generating” claim language was removed by Appellants in the Amendment of June 30, 2005 responding to the Examiner’s Non-Final Office Action mailed March 30, 2005. Therefore, Appellants’ arguments directed to the “generating” claim language are not relevant to the claims on appeal.

In any event, the Appellants do not dispute that Mizusawa’s seal packing 12 (i.e., stabilizer) is exposed to a certain level of tension (Reply Br. 3). Rather, Appellants argue that the tension in seal packing 12 cannot be construed as “exerting” tension within the lamp housing 1 (i.e., plug) along a third axis (Reply Br. 3).

We are unpersuaded by Appellants’ argument that the tension or any reactionary force within the seal packing 12 (i.e., stabilizer) cannot be construed to be “exerting” tension within the plug along a third axis. As the Examiner diagrammed on pages 3 and 4 of the Answer, Mizusawa’s seal packing 12 (i.e., stabilizer) is nipped (i.e., compressed) such that the reactionary force in the seal packing 12 (i.e., stabilizer) is exerted along a third axis (i.e., “A3” in the Examiner’s “Marked-up Figure 3”) (Answer 3-

4). Thus, Mizusawa discloses directing or exerting tension along a third axis of the lamp housing 1.

From our foregoing discussion, Mizusawa discloses the following argued claim features of the stabilizer: “exerting tension within the plug along a third axis” (claim 1), and “directing a force along a third axis” (claim 17).

CLAIMS 17, 25, AND 27

Appellants argue that the lamp housing disclosed by Mizusawa does not have “a generally planar[-]shaped body” as required by claims 17, 25 and 27 (Br. 15). Appellants concede that individual surfaces of the lamp case may be generally planar, however, they maintain that the lamp housing as a whole, which the Examiner alleges is generally planar-shaped, is clearly non-planar (Br. 16).

We have considered all of Appellants’ arguments and are unpersuaded by them for the reasons below.

As the Examiner stated in the Answer, “a generally planar-shaped body,” as recited in claims 17, 25, and 27, includes a body having various “non-planar attributes in addition to its planar attributes” (Answer 14). We agree. The Examiner’s construction of the claim phrase “a generally planar-shaped body” is supported by Appellants’ description of their pillar shield, which is shown as having numerous protrusions (e.g., stabilizers 600, clips 400 and tensioners 500) (Figure 3). Therefore, we find that in as much as Appellants’ claimed pillar shield having numerous protrusions extending therefrom is “a generally planar-shaped body,” Mizusawa’s lamp case, likewise, is a “generally planar-shaped body.”

From the foregoing, we affirm the Examiner's § 102(b) rejection of argued claims 1, 17, 25, and 27 and non-argued claims 2-5, 7-12, 18-21, 23, 24, 26, and 28.

35 U.S.C. § 103(a) REJECTION OVER MIZUSAWA IN VIEW OF APA

Appellants argue that there is no teaching or suggestion in Mizusawa to construct the lamp housing as a one piece structure (Br. 17). Appellants contend that making Mizusawa's lamp housing a one-piece structure would render it incapable of housing a lamp (Br. 17).

We have considered all of Appellants' arguments and find them unpersuasive for the reasons below.

Generally, if a person of ordinary skill can implement a predictable variation of a prior art invention, §103 likely bars its patentability. *KSR v. Teleflex Int.*, 127 S. Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007). A person of ordinary skill is also a person of ordinary creativity, not an automaton. *KSR*, 127 S. Ct. at 1742, 82 USPQ2d at 1397. Moreover, it would have been obvious to make integral that which was separate before, absent a showing that the claimed integration yields unexpected results. *In re Kohno*, 391 F.2d 959, 960, 157 USPQ 275, 276-77 (CCPA 1968), citing *In re Fridolph*, 309 F.2d 509, 513, 135 USPQ 319, 322 (CCPA 1962). The integration of parts must involve more than mere mechanical skill. *Id.*

Dependent claims 6 and 22 recite that the plug or pillar shield is "a one-piece monolithic structure." Claims 6 and 22 depend from independent claims 1 and 17, respectively. As the Examiner found, Mizusawa discloses all the claim features of independent claims 1 and 17 (Answer 3-12).

Mizusawa discloses the claim features being separate pieces (i.e., Mizusawa

does not disclose the lamp housing 1 being a “one-piece monolithic structure”) (Answer 13).

From the foregoing, it would have been obvious to integrate Mizusawa’s seal packing 12, fastening members 14, and lamp case 2 into a “one-piece monolithic body” because it is a predictable variation of a prior art invention which combines various elements into a single structure (i.e., a “one-piece monolithic structure) to simplify construction and use of the part. *KSR*, 127 S. Ct. at 1740, 82 USPQ2d at 1396. Furthermore, Appellants are merely making integral that which was separate before, which as been held to be obvious absent as showing of unexpected results. *Kohno*, 391 F.2d at 960, 157 USPQ at 276-77, citing *In re Fridolph*, 309 F.2d at 513, 135 USPQ at 322. Appellants have not proffered any evidence showing that the integration of the plug or pillar shield has unexpected results.

We are unpersuaded by Appellants’ argument that making Mizusawa’s lamp housing 1 a one-piece structure would render it incapable of housing a lamp (Br. 17). We understand Appellants to be arguing that if the lamp cover 7 would have been integrally formed on lamp housing 1, then there would have been no way to supply a light bulb to the lamp housing 1 (i.e., the lamp housing would have been sealed). We remind Appellants that a person of ordinary skill is also a person of ordinary creativity, not an automaton. *KSR*, 127 S. Ct. at 1742, 82 USPQ2d at 1397. Accordingly, one of ordinary skill in the art, using ordinary creativity to integrate various parts of Mizusawa’s lamp housing 1, would not have made Mizusawa’s lamp cover 7 an integrated part of the lamp housing 1 without providing another way to supply a light bulb to the lamp housing. Integrating the lamp cover 7 to lamp case 2, without providing another way to supply a light bulb to the

lamp housing, is contrary to the ordinary creativity of one of ordinary skill in the art.

Accordingly, we affirm the Examiner's § 103(a) rejection of claims 6 and 22 over Mizusawa in view of APA.

DECISION

The Examiner's rejection of claims 1-5, 7-12, 17-21, and 23-28 under 35 U.S.C. § 102(b) as being unpatentable over Mizusawa is AFFIRMED.

The Examiner's rejection of claims 6 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Mizusawa in view of APA is AFFIRMED.

The Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

tf/lr

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